**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**CENTRAL EXCISE APPEAL NO.245 OF 2006**

The Commissioner of Central Excise ..Appellant.

V/s.

M/s. Voltas Ltd. ..Respondent.

Mrs.S.V.Bharucha with L.B.Patne for appellant.

Mr.S.Rustamji with Vipul Bilve i/b. Mulla & Mulla C.B. & C. for respondent.

**CORAM : F.I.REBELLO AND J.P.DEVADHAR, JJ.**

**DATED : 30TH AUGUST, 2007.**

**P.C. :-**

The Tribunal by its order had dismissed the appeal preferred by the revenue on the grounds firstly, that the proviso to clause to section 11 A(1) of the Act on the facts of the case cannot be invoked. Secondly, that goods were not eligible for benefit under Notification 10/97 as it could not be applied retrospectively and thirdly that the proceedings were barred by limitation.

2. It is not necessary for us to go into the first two findings as in our opinion, the entire case will be based on the third finding and this appeal can be disposed of. We find that in the order of the Tribunal in para 2 that two show cause notices dated 8th September, 1999 and 13th September, 1999 were issued by the department and were adjudicated in favour of the assessee by orders dated 2/12/1999 and 20/4/2000 respectively. The present show cause notice is dated

4th September, 2002 in respect of the said subject matter.

3. The question which arise for our consideration is whether once in respect of the same subject matter notices were issued, whether it is open to the revenue to apply the extended period of issuing a second show cause notice. In our opinion, the law is settled and the issue is no longer res integra. Considering the Judgment of the Supreme Court in **Nizam Sugar Factory V/s. Collector of Central Excise, A.P.** reported in **2006 (197) E.L.T. 465 (S.C.)**. In the matter of extended period after considering the earlier Judgment, the Supreme Court held that allegation of suppression of facts cannot be sustained as when the first show cause notice was issued all the relevant facts were to the knowledge of the authorities.

In the instant case also when the first show cause notice was issued all the facts were within the knowledge of the revenue. Considering that, in our opinion, the second show cause notice issued for the extended period could not have been issued as it would not amount to suppression of facts. Considering the above, the question of law as formulated would not arise. Hence appeal dismissed.

**(F.I.REBELL0, J.)**

**(J.P.DEVADHAR, J.)**